

EFolder Print Summary

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Page 1

December 23, 2013 10:25:27 am

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AFTER RECORDING MAIL TO:
 First American Title
 National Commercial Services
 818 Stewart St, Suite 800
 Seattle, WA 98101

**Document Title(s):**

ENVIRONMENTAL COVENANT, SLIP 4 EARLY ACTION
 AREA OF LOWER DUWAMISH WATERWAY SUPERFIND
 SITE

Reference Document:

_____ N/A _____

**Grantor(s):**

The Boeing Company

Holder:

The Boeing Company

Abbreviated Legal Description as follows:

Ptn Sec 29, Twp 24 N, Rge 4 E, W.M., being a portio of Slip No. 4 as defined in instrument under recording no. 4477307, records of King County. The complete legal description appears in Exhibit A, beginning on page 10

Assessor's Property Tax Parcel/Account Number(s):

__0022000005__

Said documents were filed of
 record as an accommodation only.
 It has not been examined as to
 proper execution or as to its effect
 upon title.

ENVIRONMENTAL COVENANT
SLIP 4 EARLY ACTION AREA OF LOWER DUWAMISH WATERWAY
SUPERFUND SITE

RETURN TO: Office of Environmental Cleanup
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

GRANTOR: The Boeing Company

PO Box 3707
Seattle, WA 98124-2207

HOLDER: The Boeing Company

PO Box 3707
Seattle, WA 98124-2207

RELATED DOCUMENTS: N/A

LEGAL DESCRIPTION
OF THE REAL
PROPERTY SUBJECT
TO COVENANT:

Ptn Sec 29, Twp 24 N, Rge 4 E, W.M., being a portion of Slip No. 4 as defined in instrument under recording no. 4477307, records of King County. The complete legal description appears in Exhibit A, beginning on page 10.

TAX PARCEL(S): 0022000005

ENVIRONMENTAL COVENANT

I. Purpose and Background

This Environmental Covenant (Covenant) made this 11th day of December, 2013 is executed pursuant to the Washington State Uniform Environmental Covenants Act ("UECA"), RCW Chapter 64.70 *et seq.*, and imposes certain conditions and restrictions on real property located in the City of Seattle, King County, Washington.

In 2001, the U.S. Environmental Protection Agency ("EPA") placed the Lower Duwamish Waterway Superfund Site (the "Site") on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.* ("CERCLA"). EPA subsequently established Early Action Areas ("EAAs") within the Site, including the Slip 4 EAA, consisting of the certain tidelands and bedlands within Slip 4. EPA issued an Action Memorandum for Non-Time Critical Removal Action ("NTCRA") for the Slip 4 EAA in May 2006, which required excavation and removal of certain sediments, capping of other sediments and soils, placement of institutional controls to limit potential human and/or ecological exposure to remaining contamination, and monitoring to verify the effectiveness of the NTCRA (collectively, the "Removal Action"). The Action Memorandum and supporting information regarding the Slip 4 EAA are contained in the administrative record that is on file with EPA Region 10 or its successor agency. As of the date of this Covenant, the EPA Region 10 regional office is located at 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

An Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 10-2006-0364 ("Settlement Agreement"), was issued by EPA to the City of Seattle and King County in September 2006 for implementation of the NTCRA selected in the Action Memorandum for the Slip 4 EAA.

Pursuant to the Action Memorandum this Covenant, as an institutional control, is necessary to protect human health and the environment and to ensure the integrity of the NTCRA.

EPA has consulted pursuant to RCW 64.70.040(5) with local land use planning authorities in the development of the land use or activity restrictions in this Covenant.

II. Conveyance and Covenant

Grantor, The Boeing Company, hereby binds Grantor, its successors and assigns, and conveys to the Holder the land use restrictions and conditions and such other rights conveyed in this Covenant concerning the area at the Slip 4 EAA owned by the Grantor and legally described Exhibit A, which by this reference is incorporated into this Covenant (hereinafter, the "Property"). EPA and the Washington Department of Ecology ("Ecology") shall have full right of enforcement pursuant to UECA of the restrictions, conditions and other rights conveyed in this Covenant.

Grantor covenants to and with the Holder and its successors and assigns that Grantor owns the Property in fee simple and has the exclusive right to convey the Property or any interest therein, and that the Property is free and clear of encumbrances except those that Grantor has identified to EPA in a title commitment. Grantor will use best efforts to secure from all identified prior encumbrance holders either subordination of such interests to, or a binding recorded agreement to be bound by, these covenants. Grantor will warrant and defend the title and quiet possession of the property.

Grantor makes the following covenants as to limitations, restrictions, and uses to which the Property may be put and specifies that such covenants shall run with the land, as provided by law, shall be perpetual, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereinafter "Owner"):

1. Any activity on the Property that may result in the release or exposure to the environment of the contaminated sediment or soil that was contained as part of the Removal Action, or create a new exposure pathway, is prohibited, unless prior written approval from EPA is obtained authorizing the specific activity. Prohibited activities include, but are not limited to: altering, modifying, or removing the Capped Areas (as defined below); piling installation; dredging, drilling, digging, excavation, placement of any objects, fill, or use of any equipment in the Capped Areas which deforms or stresses the surface beyond its load bearing capability; piercing the surface with a rod, spike or similar item; bulldozing or earthwork; anchoring, grounding or spudding, PROVIDED THAT,

some controlled activities that may temporarily disturb Capped Areas are allowed so long as the proposals for such work that may temporarily disturb the Capped Areas are accompanied by detailed plans describing (a) the proposed activity, (b) actions to limit contaminant releases during the activity, (c) actions to restore the integrity of the Capped Areas, and (d) plans for monitoring and reporting. Such proposed activities are subject to written approval by EPA. Examples of such activities that may be allowed include, but are not limited to: excavation for repair or replacement of existing outfalls; excavation for installation of new outfalls or other utilities; anchoring of construction equipment; cap maintenance (including placement of additional cap material and/or excavation of existing cap materials or underlying soils or sediments). The terms "Capped Areas" in these covenants include engineered slope caps, sediment caps, and soil covers, as those terms are used in the Action Memorandum and the Removal Action Completion Report for the Slip 4 EAA.

2. Any activity on the Property by the Owner that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Removal Action, or create a new exposure pathway, is prohibited without prior written approval from EPA.
3. The Owner shall allow access to the Capped Areas to any parties or persons required by the Removal Action to perform maintenance, repairs or any work on the Capped Areas.
4. The Owner shall prohibit any uses or activities that are inconsistent with any of the restrictions established in this Covenant, unless such use or activity is approved by EPA in advance in writing.
5. The Owner must restrict tenant activities to uses and activities consistent with this Covenant. Further, the Owner must notify all Property purchasers, lessees and easement holders of the restrictions set forth in this Covenant, and make compliance with this Covenant a condition any conveyance of title, easement, lease or other interest in the Property. Any deed, lease, or other conveyance of any interest in the Property shall make adequate provisions for any continued monitoring or maintenance of the Capped Areas on the Property.

6. The Owner shall use best efforts to provide sixty (60) days, but at a minimum shall provide thirty (30) days, advance written notice to EPA of the Owner's intent to convey or transfer any interest in the Property. Such notice shall include the name and address of the proposed transferee.
7. The Owner shall allow authorized representatives of EPA and Ecology the right to enter the Property at reasonable times to (1) evaluate compliance with this Covenant and/or the CERCLA response action, (2) inspect, perform oversight activities, and take samples, (3) inspect any response actions performed under CERCLA or Model Toxics Control Act conducted at the Property, or (4) inspect and perform maintenance on Capped Areas located on the Property. The Owner shall allow authorized representatives of the City the right to enter the Property at reasonable times to inspect, perform cap operation and maintenance activities, and to collect samples to evaluate the effectiveness of the Removal Action. To the extent there is any conflict between the access rights as stated above and those specified in the Settlement Agreement, the terms of the Settlement Agreement shall control.
8. Local permitting requirements augment the existing federal and state permitting requirements that impose conditions on any construction at Slip 4. The Owner must ensure that all required local permits are obtained prior to any construction, filling and grading, or installation/changes to stormwater configuration and discharges, installation of private utilities or other development activities that may disturb the Capped Areas. Any easements granted by the Owner must require measures to protect the integrity of the Capped Areas. These permits and easements will require appropriate elements such as (but not limited to) proper handling, characterization and disposal of contaminated sediments or soil and restoration of the Capped Areas if impacted.

III. Reservation of Rights

Grantor hereby reserves unto itself, its representatives, heirs, assigns, and successors all rights accruing from ownership of the Property that are not conditioned, restricted or prohibited by Section II.

IV. Enforcement

Compliance with this Covenant may be enforced pursuant to the Washington State Uniform Environmental Covenants Act. EPA, Ecology and the Holder shall have full enforcement rights. Failure by EPA or Holder to enforce compliance with this Covenant in a timely manner shall not be deemed a waiver of their right to take subsequent enforcement actions.

V. Recordation

Grantor shall submit this instrument for recording in the official records of King County, Washington within 10 days after the execution of this instrument and shall pay the costs associated with recording.

VI. General Provisions

Agency's Interest. Pursuant to RCW 64.70.030, the rights granted to EPA by this Environmental Covenant are not interests in real property.

Liberal Construction. This Covenant shall be liberally construed in favor of effectuating its purposes. If any portion(s) of it is found to be ambiguous, an interpretation consistent with its purposes that would render such portion(s) valid shall be favored over one that would render it invalid.

VII. Termination and Modification

This Environmental Covenant may only be amended or terminated in accordance with the amendment and termination provisions of the Washington State Uniform Environmental Covenants Act, RCW 64.70.100.

VIII. Signature and Acknowledgements

Grantor covenants that it is authorized to grant this Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties represent and certify that they are authorized to execute this Covenant.

IN WITNESS WHEREOF, The Boeing Company has executed this Environmental Covenant on this 27 day of November, 2013.



Signature

Steven E. Sahlinger
Authorized Signatory

Printed name

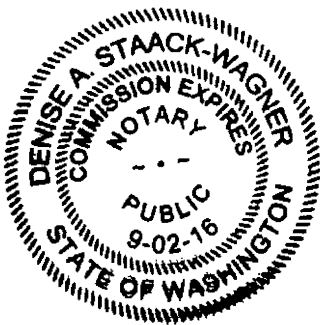
Title

STATE OF WASHINGTON)


) SS

COUNTY OF KING)

The foregoing instrument was acknowledged and signed in my presence on the 27th day of November, in the year 2013, by the person(s) who appeared before me and who acknowledged it to be his/her/their free and voluntary act.



Name (signature)



Notary Public for the state of

Washington

My Commission expires on

Sept. 02, 2016

Printed Name

Denise A. Staack-Wagner

IN WITNESS WHEREOF, The Boeing Company Holder under this Covenant, has executed this Environmental Covenant on this 27th day of November, 2013.



Signature

Steven E. Sahlinger
Authorized Signatory

Printed name

Title

STATE OF WASHINGTON)

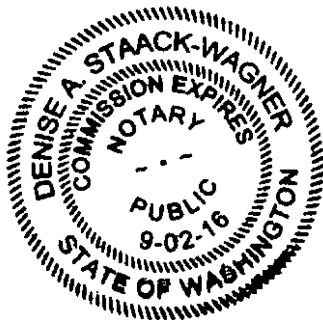
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SS

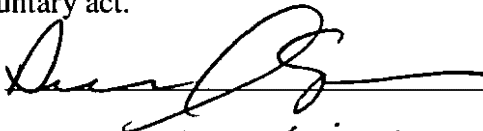
COUNTY OF KING)

)

The foregoing instrument was acknowledged and signed in my presence on the 27th day of November, in the year 2013, by the person(s) who appeared before me and who acknowledged it to be his/her/their free and voluntary act.



Name (signature)



Notary Public for the state of

Washington

My Commission expires on

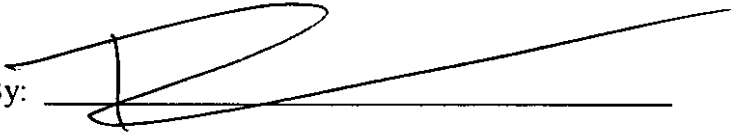
Sept. 02, 2016

Printed Name

Denise A. Staack-Wagner

The forgoing Environmental Covenant is hereby approved.

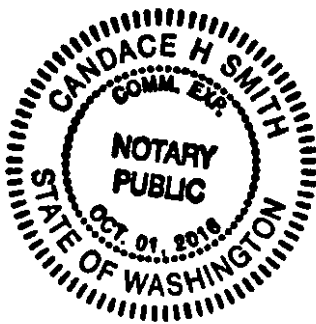
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: 

Richard Albright, Director
Office of Environmental Cleanup

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

The foregoing instrument was acknowledged and signed in my presence on the 11th day of December, in the year 2013, by the person(s) who appeared before me and who acknowledged it to be his/her/their free and voluntary act.



Name (signature) Candace H. Smith

Notary Public for the state of Washington

My Commission expires on 10-1-2016

Printed Name Candace H. Smith

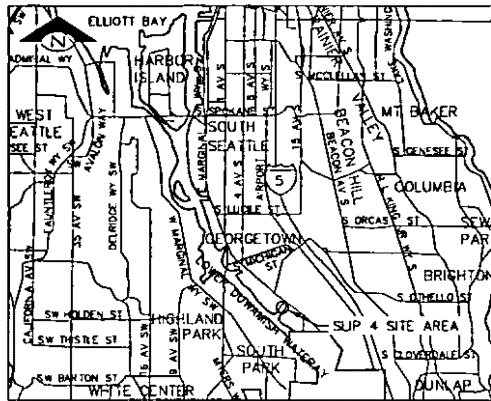
Exhibit A

Legal Description of the Property

COMMENCING AT THE INTERSECTION WITH THE EASTERLY LINE OF THE DUWAMISH COMMERCIAL WATERWAY AND THE MEDIAN LINE OF SLIP No.4 AS DEFINED IN AN AGREEMENT RECORDED UNDER RECORDING No. 4477307, IN KING COUNTY RECORDS. (POINT ALSO BEING KNOWN AS THE MOST NORTHWESTERLY POINT OF THE BOEING COMPANY'S PLANT 2 BOUNDARY LOCATED IN SEATTLE, WASHINGTON).

THENCE NORTH 56° 29' 43" EAST, ALONG SAID MEDIAN LINE, 290.45 FEET TO AN ANGLE POINT IN SAID MEDIAN LINE; THENCE NORTH 43°08'07" EAST, ALONG SAID MEDIAN LINE, A DISTANCE OF 286.12 FEET TO THE TRUE POINT OF BEGINNING. THENCE SOUTH 43°46'28" EAST, A DISTANCE OF 111.33 FEET; THENCE NORTH 18°14'05" EAST, A DISTANCE OF 22.66 FEET TO THE INTERSECTION WITH THE EASTERLY LINE OF THE BOEING COMPANY'S PLANT 2 BOUNDARY; THENCE NORTH 51°08'00" WEST, ALONG SAID BOUNDARY, A DISTANCE OF 101.92 FEET TO THE INTERSECTION WITH SAID MEDIAN LINE; THENCE SOUTH 43°08'07" WEST, ALONG SAID MEDIAN LINE, A DISTANCE OF 6.96 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 1,468 SQUARE FEET, OR +/- 0.034 ACRES MORE OR LESS, and depicted in Attachment A.



VICINITY MAP

Crowley Marine
Services, Inc.
Parcel
#2136200841

City of Seattle
Parcel #2924049110

King County
Parcel
#2924049091

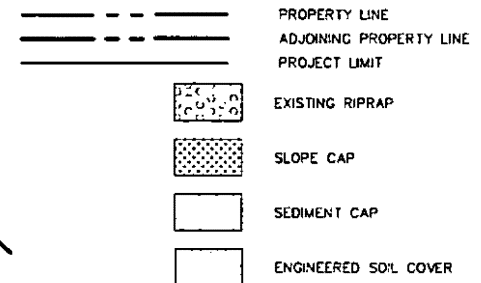
First South Properties
Parcel #2924049043

Crowley Marine
Services, Inc.
Parcel
#2136200841

The Boeing Company
Parcel
#0022000005

The Boeing Company
Parcel #0022000005

LEGEND

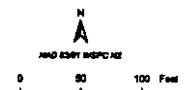


AREA SUBJECT TO COVENANT*

	CITY OF SEATTLE	THE BOEING COMPANY
SEDIMENT CAP	2.67	0.02
SLOPE CAP	0.72	0.02
ENGINEERED SOIL COVER	0.15	0
TOTAL	3.54	0.04

* ONLY THE BOEING PROPERTY IS INCLUDED WITHIN THIS COVENANT. THE PORTION OF THE CAP WITHIN THE CITY OF SEATTLE PROPERTY WILL BE PROTECTED BY A SEPARATE COVENANT, TO BE RECORDED BY THE CITY.

MERIDIAN: WA STATE PLANE COORDINATE SYSTEM (NORTH ZONE), NAD 1983, 1991 ADJUSTMENT.



ATTACHMENT A